AD- 29
Ct No.16
08.04.2025
(SSS)

FMAT 116 of 2025
with
CAN 1 of 2025

Anwar Hussain
Vs.
Md. Quamruddin Qureshi

Mr. Biswaroop Bhattacharya (Through VC)
Mr. Arik Banerjee,
Mr. Debabrata Das,
Mr. Saptarshi Mukherjee,
Mr. Pratik Acharjee
...For the Appellant.

Mr. Tarique Quasimuddin,
Mr. Ram Narain Rajak,
Md. Adnan Lodhi
....For the Respondent.

1. The present appeal has been preferred against the grant of an ad interim injunction. The plinth of the case of the plaintiff/respondent in the suit is that the plaintiff/respondent is a lawful occupier of the suit premises and a consequential permanent injunction has been sought in aid of such claim.

2. Learned Counsel appearing for the appellant contends that there was gross material suppression by the plaintiff/respondent in the court below, of an agreement entered into between the parties, pursuant

to which the respondent entered into possession. It is submitted that the respondent does not have any right, title or interest in the suit property by virtue of the said agreement. It is contended that due to such suppression of material facts itself, the ad interim order of injunction ought to be set aside.

3. Learned Counsel submits that the appellate court, while hearing an appeal against an ad-interim injunction, can look into germane documents if there is a material suppression by the plaintiff who took advantage of the impugned order.

4. By placing reliance on the agreement-in-question, which is annexed at page 67 of the stay application filed in connection with the appeal, learned Counsel appearing for the appellant argues that no possessory or other right has been granted to the respondent within the four corners of the said agreement. The said agreement was entered into only in the context of the appellant, who is the owner of the property, intending to let out the suit property (which is a godown). For such limited purpose, authority was given to the plaintiff/respondent to search out a prospective tenant, to renovate the property and to let out the property to such tenant on behalf of the appellant.

5. Learned Counsel takes the court through the provisions of the agreement. It is highlighted that in

terms of Clause 3 of the same, the respondent was to arrange for induction of tenant in respect of the said godown within a period of nine months. Such nine months having elapsed long back, the respondent does not have any right to the suit property even in terms of the agreement.

6. That apart, learned Counsel for the appellant points out that in Clause 7(q) of the said agreement, an arbitration clause has been incorporated in respect of disputes and differences arising out of the agreement. Thus, the respondent acted *de hors* the law in approaching the civil court without first referring the matter to arbitration.

7. Upon hearing learned Counsel for the parties, we find from the annexure at page 60 of the stay application of the appellant that the same is a purported receipt dated December 15, 2019 indicating payment by the respondent to the appellant of an amount of Rs.51 lakh as "salami" out of total Rs.57 lakh "for induction of a tenant in respect of the suit property". The remaining amount of Rs.6 lakh was to be paid by the respondent to the appellant, as per the said receipt, within 30 days thereafter.

8. As per the plaint case, the plaintiff/respondent claims possessory right on the premise of not only the agreement, but the said receipt as well. In order to

consider whether the non-mention of the agreement-in-question in the plaint or injunction application filed in the trial court amounted to suppression of a material fact, we have to look at the effect which the agreement might have had on the outcome of the ad interim prayer of injunction, if produced in the trial court.

9. We find from the materials on record that although the agreement was not cited, the receipt showing payment of Rs.51 lakh by the plaintiff/respondent was placed before the trial court.

10. Even if we take into consideration the agreement and take the clauses of the same into account, the arbitration clause therein does not *per se* act as a bar to the jurisdiction of the civil court in taking up the disputes referred to in the arbitration clause, unless, before the filing of the first written statement on the merits of the dispute, the defendant in the suit files an application under Section 8 of the Arbitration and Conciliation Act, 1996 and seeks a reference to arbitration. Thus, the right to have a reference to arbitration is not an absolute bar to the exercise of jurisdiction by the civil court but a right which can be waived by the defendant. Hence, at the stage of grant of ad interim injunction, the existence of the arbitration clause in the agreement could not

operate as a bar to the suit or to grant of ad interim injunction.

11. We also find from the agreement that there is no mention of any requirement of payment of any amount, as "salami" or otherwise, by the respondent to the appellant.

12. However, the receipt is prima facie proof that the payment was made by the respondent for the suit property contemporaneously with the agreement. Hence, even if the agreement was produced before the trial court, read in conjunction with the money receipt, it would tantamount to a prima facie case having been made out by the plaintiff/respondent insofar as the valuable rights accrued in favour of the respondent by virtue of the said payment is concerned.

13. Since the said payment, although beyond the scope of the agreement, was contemporaneous with the agreement and made in respect of the rights of the respondent in respect of the subject property, we have to take into consideration the legal effect of Sections 202 and 204 of the Indian Contract Act, which provide that an agency cannot be terminated if a valuable right has been accrued in favour of the agent or any authority granted to the agent has been partly exercised.

14. In part exercise of the agreement, as per the pleadings of the respondent's plaint and injunction application in the court below, some renovation work has allegedly been done by the plaintiff/respondent and the plaintiff/respondent is now in occupation of the property.

15. Even an illegal occupant cannot be evicted without due process of law.

16. As such, we find that even if the agreement-in-question was produced in the trial court, it would not have made a material difference in the outcome of the prayer for ad interim injunction. Thus, non-production of the agreement does not tantamount, in our opinion, to gross suppression of a fact which is material for the adjudication of the ad interim prayer.

17. That apart, the learned Trial Judge was justified in proceeding on the premise of the averments contained in the plaint and injunction application and the documents before her at the ad interim stage and as such, we do not find any scope of interference with the impugned order of ad interim injunction.

18. Accordingly, FMAT 116 of 2025 is dismissed under Order XLI Rule 11 of the Code of Civil Procedure. Consequentially, CAN 1 of 2025 stands dismissed as well. There will be no order as to costs.

19. However, we make it amply clear that the above observations have been returned only in the context of considering the admission of an appeal against an ad interim order and shall not be considered to be binding at any further stage of the injunction application or the suit in the trial court or before any other court/forum. It is made clear that it will be open to the learned Trial Judge to independently decide all further stages of the suit, including the injunction application.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)